IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1241 OF 1998

1) The Pune Municipal Corporation
through the Municipal Commissioner
Pune Municipal Corporation, Pune 05.

2) The Health Officer
Pune Municipal Corporation, Pune 05. ... Petitioners

V/s.

Pandurang Nivrutti Gaikwad
143, Dattawadi, Pune 30. ... Respondent

Mr.R.M. Pethe i/b R.G. Ketkar for Petitioners
Ms.Seema Sarnaik for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 12, 2004**

ORAL JUDGMENT:

. This Petition challenges the order of the Industrial Court at Pune declaring that the petitioners have committed an unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act. The Industrial Court as a consequence of such a declaration has quashed and set aside the order dated 23.2.1993 passed by the Petitioners, punishing the respondent-workman by stoppage of two increments permanently.

2. The respondent-workman is employed with the Petitioner as a junior technician in the Kamla Nehru Hospital run by the Petitioners. He was appointed to the post of Bio-Chemist on 5.8.1987. A memo was issued

to him on 23.1.1990 alleging that he had remained absent on 20.1.1990 and 22.1.1990. The reply submitted by the Respondent was not accepted by the Petitioners. On 29.1.1990, another memo was issued to the respondent-workman alleging amongst other charges that he had carried out tests on several blood samples and urine samples within 40 minutes which, according to the Petitioners, was not physically possible. Furthermore, it was alleged that the respondent-workman had behaved in an insolent manner and that he had remained absent from duty unauthorisedly on 24.1.1990. The explanation given to this memo also was not accepted by the Petitioners and hence, a chargesheet was issued on 17.11.1990 containing four charges. The main charge was that the respondent had tested several samples for blood sugar, blood urine and cholesterol within 40 minutes thereby giving reports which were inaccurate and not based on correct evaluation of the pathological tests. An enquiry was instituted against the respondent-workman. The Enquiry Officer held that all the charges alleged against the respondent had been proved. On a consideration of the enquiry report and the evidence led before the enquiry officer, the disciplinary authority issued an order of punishment on 23.2.1993 stopping two increments with permanent effect. Aggrieved by this order, the respondent filed a complaint (ULP) No.128 of 1993 under section 28 and

under Items 9 and 10 of Schedule IV of the MRTU & PULP Act before the Industrial Court, Pune.

3. After the pleadings were filed by both the parties, the enquiry proceedings and the report of the Enquiry Officer were produced on record. The evidence of the respondent-workman and an officer of the Petitioners was led before the Industrial Court. The Industrial Court despite examining the evidence has not come to any definite conclusion as to whether the misconduct was proved against the respondent-workman. Instead, the Industrial Court has proceeded on the footing that section 83(1) of the Bombay Municipal Corporation Act, 1888 is applicable to the case of the respondent. The Industrial Court was of the view that since the provisions under this section were not complied with by the Petitioners, the punishment inflicted was without jurisdiction.

4. Mr.Pethe, learned Advocate appearing for the Petitioners, submits that the Industrial Court has completely misdirected itself by considering the provisions of the Bombay Municipal Corporation Act which is not applicable at all to the Petitioners. He submits that the provisions of the Bombay Provincial Municipal Corporations Act govern the functioning of the petitioners, that is, the Pune Municipal Corporation.

The Kamla Nehru Hospital, in which the respondent was employed, is run by the Petitioners and therefore, only the provisions of the Bombay Provincial Municipal Corporations Act are required to be considered. He further submits that there is no doubt that the respondent has committed a misconduct of completing several tests within 40 minutes when it was not physically possible to do so. He, therefore, submits that the order of the Industrial Court be quashed and set aside.

5. Ms.Sarnaik, appearing for the Respondent, submitted that the Industrial Court has merely reproduced the section of the Bombay Municipal Corporation Act which was considered in a case cited by the respondent before the Industrial Court. She then contended that neither the enquiry proceedings nor the evidence led established that the respondent was in fact guilty of the misconduct alleged against him.

6. On a bare perusal of the order of the Industrial Court, I find that the Industrial Court has completely misdirected itself while considering the case before it. The Industrial Court has examined the evidence and the enquiry report before it. However, there is no finding as to whether the charges have been proved against the respondent nor does the Industrial Court precisely state

that whether he concurs with the findings of the enquiry officer. Instead, the Industrial Court has proceeded on a tangent and considered whether section 83 of the Bombay Municipal Corporation Act (which has nothing to do with the Petitioners) has been followed. The Petitioners, as rightly contended by Mr.Pethe, are governed by the Bombay Provincial Municipal Corporations Act and the provisions of that Act would be applicable for considering whether the punishment inflicted has been imposed in accordance with that Act under powers conferred on the authority imposing such a punishment. The Industrial Court has arrived at a finding that there is an unfair labour practice committed because no approval was sought from the standing committee by relying on the provisions of the Bombay Municipal Corporation Act. This, in my view, is a wrong approach of the Industrial Court and, therefore, the order of the Industrial Court is required to be set aside.

7. The order of the Industrial Court dated 29.9.1997 is quashed and set aside. The complaint is remanded to the Industrial Court to consider the enquiry report and the evidence led before the Industrial Court to arrive at a conclusion as to whether the Petitioners have been able to establish that the respondent had committed the misconduct alleged against him. The Industrial Court shall endeavour to complete the hearing

of the complaint and dispose it of by 31.12.2004. Parties to appear before the Industrial Court, Pune on 6.9.2004.

8. Rule made absolute accordingly. No order as to costs.

9. Writ to go down immediately.

10. Parties be provided an authenticated copy of this order.